

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIA HENRY, *et al.*, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, *et al.*,

Defendants.

Case No.: 22-cv-00125

Hon. Matthew F. Kennelly

JOINT STATUS REPORT DUE MARCH 6, 2023

The parties submit this Joint Status Report pursuant to the Case Management Order, Dkt. No. 326 (the “March 1 Order”), requiring that “[b]y March 6, 2023, the parties shall file a joint status update regarding the parties’ agreement on Defendants’ production of (a) structured data that was created after the filing of the Complaint and that concern Defendants’ admissions and financial aid, and (b) documents that were created after the filing of the Complaint and that concern Defendants’ admissions and financial aid policies and practices.”

I. THE PARTIES’ RESPECTIVE POSITIONS ON DISCOVERY ISSUES

Plaintiffs’ Position

The parties have reached agreement on the issues set forth in the draft Order that Plaintiffs are submitting today in connection with this JSR, with the exception of the language in Section 3.G, which addresses Defendants’ obligation to supplement and correct data consistent with Federal Rule of Civil Procedure 26(e), including in connection with Defendants’ experts’ prospective use and analysis of such data. We understand that Defendants do not agree to include such language in the proposed Order. Section 3.G in Plaintiffs’ proposed order is necessary to

clarify that the Defendants are not relieved of the obligation to supplement and correct data as Rule 26(e) requires and to set out a sensible timetable for Defendants to produce supplemental or corrected data that their experts may come to rely upon and analyze, to enable Plaintiffs and their experts to respond.

Defendants' Position

1. Post-Complaint Structured Data

The only issue unresolved following the hearing on February 23, 2023, was for the parties to agree on the appropriate date for collecting and producing post-Complaint financial aid and admissions data: October 1, 2023 (as Defendants proposed), or December 31, 2023 (as Plaintiffs proposed in order to obtain preliminary, then-available data related to Early Action and Early Decision applicants expected to be attending school in the academic year that begins in or about August 2024). Despite the fact that such data will be both incomplete and subject to change, Defendants agreed to collect the data on or around January 15, 2024, and to produce it to Plaintiffs as soon as practicable, but no later than February 20, 2024.

With that data collection and production issue resolved, Defendants believe that entry of Plaintiffs' revised order is unhelpful, premature, and unnecessary for three reasons. First, the parties have already reached an agreement on the only issue in dispute and there is, as a result, no need for an order at all. Second, new Section G of Plaintiffs' revised order includes language related to the production of data that may or may not be relied upon by Defendants' expert witnesses in May 2024. However, this issue is already governed by the Expert Stipulation entered by the Court. *See* Section 7, ECF No. 218. Defendants see no need to single out a particular type of data for special treatment or to risk confusion by having multiple orders governing the very same issue. And third, new Section G also seeks unnecessarily to preview a potential argument by Plaintiffs under Federal Rule of Civil Procedure 26(e) over *a year* before it conceivably could

become ripe. In short, anticipating the unreliability of any opinions that Plaintiffs' experts may offer about preliminary financial aid and admissions data for 2024 Early Action or Early Decision applicants, Plaintiffs now seek to require Defendants to make continual future financial aid and admissions data productions to reflect events that occur (e.g., decisions on appeals of financial aid, changes in students' financial circumstances, late applications for financial aid, etc.) after fact discovery closes on January 31, 2024, and Plaintiffs' expert reports are served. Plaintiffs seek to do so by labeling future productions "supplements" or "corrections" to try to invoke Rule 26(e). But the data to be produced will accurately reflect the state of financial aid and admissions at the time the data is collected. That Plaintiffs' experts may misread, misinterpret, or misapply those data is no basis to create further burden on Defendants with yet another round of data collections and productions. In all events, the Court need not resolve any question of further supplementation now—almost a year before Defendants or the Court know what Plaintiffs' experts may say about the data.

Accordingly, Defendants respectfully submit that the Court need not enter a revised order given that the parties have reached an agreement on the cut-off and production dates for post-Complaint structured data. If the Court believes a revised order is necessary, Defendants respectfully request the Court enter their proposed order, which mirrors Plaintiffs' proposal except with respect to the unnecessary Section G.

2. Post-Complaint Documents

With respect to documents created after the filing of the Complaint, subject to agreed-upon search terms, Defendants' objections, and meet-and-confers with Plaintiffs, Defendants are and will be producing responsive, non-privileged materials in accordance with the March 1, 2023, Order.

Dated: March 6, 2023

Respectfully submitted,

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